

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DERRICK ANDRE MITCHELL,

No. C 10-00598 SBA (PR)

Petitioner,

**ORDER DIRECTING PETITIONER TO
FILE AN AMENDED PETITION**

v.

TIM VIRGA, Warden,

Respondent.

Petitioner, a state prisoner, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On September 28, 2011, the Court issued an Order granting Petitioner's request for a stay of proceedings while he returned to state court to exhaust his state judicial remedies. The Court stated:

Nothing further will take place in this action until Petitioner receives a final decision from the California Supreme Court and, within **thirty (30) days** of doing so, moves to reopen the action, lift the Court's stay and amend the stayed petition to add the newly-exhausted claims.

(Sept. 28, 2011 Order at 9.)

On August 15, 2012, Petitioner informed the Court that his state proceedings had concluded; however, he did not amend the stayed petition to add the newly-exhausted claims. Therefore, in an Order dated August 22, 2012, the Court directed Petitioner to file an amended petition which incorporated the newly-exhausted claims.

Petitioner did not file an amended petition. Instead, on October 25, 2012, he filed a motion to continue the stay of his petition or to strike claim seven.

1 In an Order dated February 5, 2013, the Court granted Petitioner's motion to continue the
2 stay of these proceedings in order to exhaust his state judicial remedies as to claim seven.

3 On September 30, 2013, Petitioner informed the Court that his state proceedings relating to
4 claim seven had concluded; however, he did not amend the stayed petition to add all his newly-
5 exhausted claims. Therefore, Petitioner must file an amended petition in this Court which
6 incorporates all the newly-exhausted claims he intends to raise in federal court, as directed below.

7 **CONCLUSION**

8 1. No later than **twenty-eight (28) days** of the date of this Order, Petitioner must file an
9 amended petition in this Court which incorporates all the newly-exhausted claims he intends to raise
10 in federal court. The Court will lift the stay on the date that Petitioner files his amended petition.
11 Petitioner must submit the amended petition on the attached blank habeas petition form, clearly label
12 the petition as the "Amended Petition," and write in the case number for this action on the form. He
13 should also attach to his amended petition a copy of his petition to the California Supreme Court, if
14 the document is available to him. **If Petitioner fails to file an amended petition within the**
15 **prescribed period, the Court will dismiss this action without prejudice for failure to prosecute.**

16 2. The Clerk of the Court shall send Petitioner a blank § 2254 habeas petition form.

17 IT IS SO ORDERED.

18 DATED: 12/30/2013


SAUNDRA BROWN ARMSTRONG
United States District Judge